
HOUSE BILL 2433

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By Representatives Conway, Delvin, Cooper, Clements, Doumit, Bush, Cox, Fromhold, Linville, Santos, Haigh, Wood, McDermott and Armstrong

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1 AN ACT Relating to providing optional service credit for substitute
2 service to members of the school employees' retirement system; amending
3 RCW 41.35.010 and 41.35.030; and adding a new section to chapter 41.35
4 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 41.35.010 and 2001 c 180 s 3 are each amended to read
7 as follows:

8 The definitions in this section apply throughout this chapter,
9 unless the context clearly requires otherwise((÷)).

10 (1) "Retirement system" means the Washington school employees'
11 retirement system provided for in this chapter.

12 (2) "Department" means the department of retirement systems created
13 in chapter 41.50 RCW.

14 (3) "State treasurer" means the treasurer of the state of
15 Washington.

16 (4) "Employer," for plan 2 and plan 3 members, means a school
17 district or an educational service district.

18 (5) "Member" means any employee included in the membership of the
19 retirement system, as provided for in RCW 41.35.030.

1 (6)(a) "Compensation earnable" for plan 2 and plan 3 members, means
2 salaries or wages earned by a member during a payroll period for
3 personal services, including overtime payments, and shall include wages
4 and salaries deferred under provisions established pursuant to sections
5 403(b), 414(h), and 457 of the United States internal revenue code, but
6 shall exclude nonmoney maintenance compensation and lump sum or other
7 payments for deferred annual sick leave, unused accumulated vacation,
8 unused accumulated annual leave, or any form of severance pay.

9 (b) "Compensation earnable" for plan 2 and plan 3 members also
10 includes the following actual or imputed payments, which are not paid
11 for personal services:

12 (i) Retroactive payments to an individual by an employer on
13 reinstatement of the employee in a position, or payments by an employer
14 to an individual in lieu of reinstatement, which are awarded or granted
15 as the equivalent of the salary or wage which the individual would have
16 earned during a payroll period shall be considered compensation
17 earnable to the extent provided in this subsection, and the individual
18 shall receive the equivalent service credit;

19 (ii) In any year in which a member serves in the legislature, the
20 member shall have the option of having such member's compensation
21 earnable be the greater of:

22 (A) The compensation earnable the member would have received had
23 such member not served in the legislature; or

24 (B) Such member's actual compensation earnable received for
25 nonlegislative public employment and legislative service combined. Any
26 additional contributions to the retirement system required because
27 compensation earnable under (b)(ii)(A) of this subsection is greater
28 than compensation earnable under this (b)(ii)(B) of this subsection
29 shall be paid by the member for both member and employer contributions;

30 (iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045,
31 and 72.09.240;

32 (iv) Compensation that a member would have received but for a
33 disability occurring in the line of duty only as authorized by RCW
34 41.40.038;

35 (v) Compensation that a member receives due to participation in the
36 leave sharing program only as authorized by RCW 41.04.650 through
37 41.04.670; and

38 (vi) Compensation that a member receives for being in standby
39 status. For the purposes of this section, a member is in standby

1 status when not being paid for time actually worked and the employer
2 requires the member to be prepared to report immediately for work, if
3 the need arises, although the need may not arise.

4 (7) "Service" for plan 2 and plan 3 members means periods of
5 employment by a member in an eligible position or positions for one or
6 more employers for which compensation earnable is paid. Compensation
7 earnable earned for ninety or more hours in any calendar month shall
8 constitute one service credit month except as provided in RCW
9 41.35.180. Compensation earnable earned for at least seventy hours but
10 less than ninety hours in any calendar month shall constitute one-half
11 service credit month of service. Compensation earnable earned for less
12 than seventy hours in any calendar month shall constitute one-quarter
13 service credit month of service. Time spent in standby status, whether
14 compensated or not, is not service.

15 Any fraction of a year of service shall be taken into account in
16 the computation of such retirement allowance or benefits.

17 (a) Service in any state elective position shall be deemed to be
18 full-time service.

19 (b) A member shall receive a total of not more than twelve service
20 credit months of service for such calendar year. If an individual is
21 employed in an eligible position by one or more employers the
22 individual shall receive no more than one service credit month during
23 any calendar month in which multiple service for ninety or more hours
24 is rendered.

25 (c) For purposes of plan 2 and 3 "forty-five days" as used in RCW
26 28A.400.300 is equal to two service credit months. Use of less than
27 forty-five days of sick leave is creditable as allowed under this
28 subsection as follows:

29 (i) Less than eleven days equals one-quarter service credit month;

30 (ii) Eleven or more days but less than twenty-two days equals one-
31 half service credit month;

32 (iii) Twenty-two days equals one service credit month;

33 (iv) More than twenty-two days but less than thirty-three days
34 equals one and one-quarter service credit month; and

35 (v) Thirty-three or more days but less than forty-five days equals
36 one and one-half service credit month.

37 (8) "Service credit year" means an accumulation of months of
38 service credit which is equal to one when divided by twelve.

1 (9) "Service credit month" means a month or an accumulation of
2 months of service credit which is equal to one.

3 (10) "Membership service" means all service rendered as a member.

4 (11) "Beneficiary" for plan 2 and plan 3 members means any person
5 in receipt of a retirement allowance or other benefit provided by this
6 chapter resulting from service rendered to an employer by another
7 person.

8 (12) "Regular interest" means such rate as the director may
9 determine.

10 (13) "Accumulated contributions" means the sum of all contributions
11 standing to the credit of a member in the member's individual account,
12 including any amount paid under RCW 41.50.165(2), together with the
13 regular interest thereon.

14 (14) "Average final compensation" for plan 2 and plan 3 members
15 means the member's average compensation earnable of the highest
16 consecutive sixty months of service credit months prior to such
17 member's retirement, termination, or death. Periods constituting
18 authorized leaves of absence may not be used in the calculation of
19 average final compensation except under RCW 41.40.710(2).

20 (15) "Final compensation" means the annual rate of compensation
21 earnable by a member at the time of termination of employment.

22 (16) "Annuity" means payments for life derived from accumulated
23 contributions of a member. All annuities shall be paid in monthly
24 installments.

25 (17) "Pension" means payments for life derived from contributions
26 made by the employer. All pensions shall be paid in monthly
27 installments.

28 (18) "Retirement allowance" for plan 2 and plan 3 members means
29 monthly payments to a retiree or beneficiary as provided in this
30 chapter.

31 (19) "Employee" or "employed" means a person who is providing
32 services for compensation to an employer, unless the person is free
33 from the employer's direction and control over the performance of work.
34 The department shall adopt rules and interpret this subsection
35 consistent with common law.

36 (20) "Actuarial equivalent" means a benefit of equal value when
37 computed upon the basis of such mortality and other tables as may be
38 adopted by the director.

1 (21) "Retirement" means withdrawal from active service with a
2 retirement allowance as provided by this chapter.

3 (22) "Eligible position" means any position that, as defined by the
4 employer, normally requires five or more months of service a year for
5 which regular compensation for at least seventy hours is earned by the
6 occupant thereof. For purposes of this chapter an employer shall not
7 define "position" in such a manner that an employee's monthly work for
8 that employer is divided into more than one position.

9 (23) "Ineligible position" means any position which does not
10 conform with the requirements set forth in subsection (22) of this
11 section.

12 (24) "Leave of absence" means the period of time a member is
13 authorized by the employer to be absent from service without being
14 separated from membership.

15 (25) "Retiree" means any person who has begun accruing a retirement
16 allowance or other benefit provided by this chapter resulting from
17 service rendered to an employer while a member.

18 (26) "Director" means the director of the department.

19 (27) "State elective position" means any position held by any
20 person elected or appointed to statewide office or elected or appointed
21 as a member of the legislature.

22 (28) "State actuary" or "actuary" means the person appointed
23 pursuant to RCW 44.44.010(2).

24 (29) "Plan 2" means the Washington school employees' retirement
25 system plan 2 providing the benefits and funding provisions covering
26 persons who first became members of the public employees' retirement
27 system on and after October 1, 1977, and transferred to the Washington
28 school employees' retirement system under RCW 41.40.750.

29 (30) "Plan 3" means the Washington school employees' retirement
30 system plan 3 providing the benefits and funding provisions covering
31 persons who first became members of the system on and after September
32 1, 2000, or who transfer from plan 2 under RCW 41.35.510.

33 (31) "Index" means, for any calendar year, that year's annual
34 average consumer price index, Seattle, Washington area, for urban wage
35 earners and clerical workers, all items, compiled by the bureau of
36 labor statistics, United States department of labor.

37 (32) "Index A" means the index for the year prior to the
38 determination of a postretirement adjustment.

39 (33) "Index B" means the index for the year prior to index A.

1 (34) "Adjustment ratio" means the value of index A divided by index
2 B.

3 (35) "Separation from service" occurs when a person has terminated
4 all employment with an employer.

5 (36) "Member account" or "member's account" for purposes of plan 3
6 means the sum of the contributions and earnings on behalf of the member
7 in the defined contribution portion of plan 3.

8 (37) "Classified employee" means an employee of a school district
9 or an educational service district who is not eligible for membership
10 in the teachers' retirement system established under chapter 41.32 RCW.

11 (38) "Substitute employee" means a classified employee who is
12 employed by an employer exclusively as a substitute for an absent
13 employee.

14 **Sec. 2.** RCW 41.35.030 and 1998 c 341 s 4 are each amended to read
15 as follows:

16 Membership in the retirement system shall consist of all regularly
17 compensated classified employees and appointive and elective officials
18 of employers, as defined in this chapter, with the following
19 exceptions:

20 (1) Persons in ineligible positions;

21 (2)(a) Persons holding elective offices or persons appointed
22 directly by the governor: PROVIDED, That such persons shall have the
23 option of applying for membership during such periods of employment:
24 AND PROVIDED FURTHER, That any persons holding or who have held
25 elective offices or persons appointed by the governor who are members
26 in the retirement system and who have, prior to becoming such members,
27 previously held an elective office, and did not at the start of such
28 initial or successive terms of office exercise their option to become
29 members, may apply for membership to be effective during such term or
30 terms of office, and shall be allowed to establish the service credit
31 applicable to such term or terms of office upon payment of the employee
32 contributions therefor by the employee with interest as determined by
33 the director and employer contributions therefor by the employer or
34 employee with interest as determined by the director: AND PROVIDED
35 FURTHER, That all contributions with interest submitted by the employee
36 under this subsection shall be placed in the employee's individual
37 account in the employee's savings fund and be treated as any other
38 contribution made by the employee, with the exception that any

1 contributions submitted by the employee in payment of the employer's
2 obligation, together with the interest the director may apply to the
3 employer's contribution, shall not be considered part of the member's
4 annuity for any purpose except withdrawal of contributions;

5 (b) A member holding elective office who has elected to apply for
6 membership pursuant to (a) of this subsection and who later wishes to
7 be eligible for a retirement allowance shall have the option of ending
8 his or her membership in the retirement system. A member wishing to
9 end his or her membership under this subsection must file on a form
10 supplied by the department a statement indicating that the member
11 agrees to irrevocably abandon any claim for service for future periods
12 served as an elected official. A member who receives more than fifteen
13 thousand dollars per year in compensation for his or her elective
14 service, adjusted annually for inflation by the director, is not
15 eligible for the option provided by this subsection (2)(b);

16 (3) Retirement system retirees: PROVIDED, That following
17 reemployment in an eligible position, a retiree may elect to
18 prospectively become a member of the retirement system if otherwise
19 eligible;

20 (4) Persons enrolled in state-approved apprenticeship programs,
21 authorized under chapter 49.04 RCW, and who are employed by employers
22 to earn hours to complete such apprenticeship programs, if the employee
23 is a member of a union-sponsored retirement plan and is making
24 contributions to such a retirement plan or if the employee is a member
25 of a Taft-Hartley retirement plan;

26 (5) Persons rendering professional services to an employer on a
27 fee, retainer, or contract basis or when the income from these services
28 is less than fifty percent of the gross income received from the
29 person's practice of a profession;

30 (6) Substitute employees, except for the purposes of the purchase
31 of service credit under section 3 of this act. Upon the return or
32 termination of the absent employee a substitute employee is replacing,
33 that substitute employee shall no longer be ineligible under this
34 subsection;

35 (7) Employees who (a) are not citizens of the United States, (b) do
36 not reside in the United States, and (c) perform duties outside of the
37 United States;

38 ((+7)) (8) Employees who (a) are not citizens of the United
39 States, (b) are not covered by chapter 41.48 RCW, (c) are not excluded

1 from membership under this chapter or chapter 41.04 RCW, (d) are
2 residents of this state, and (e) make an irrevocable election to be
3 excluded from membership, in writing, which is submitted to the
4 director within thirty days after employment in an eligible position;

5 ~~((+8+))~~ (9) Employees who are citizens of the United States and who
6 reside and perform duties for an employer outside of the United States:
7 PROVIDED, That unless otherwise excluded under this chapter or chapter
8 41.04 RCW, the employee may apply for membership (a) within thirty days
9 after employment in an eligible position and membership service credit
10 shall be granted from the first day of membership service, and (b)
11 after this thirty-day period, but membership service credit shall be
12 granted only if payment is made for the noncredited membership service
13 under RCW 41.50.165(2), otherwise service shall be from the date of
14 application.

15 NEW SECTION. **Sec. 3.** A new section is added to chapter 41.35 RCW
16 under the subchapter heading "provisions applicable to plan 2 and plan
17 3" to read as follows:

18 (1) A substitute employee who works five or more months of seventy
19 or more hours for which earnable compensation is paid in a school year
20 may apply to the department to establish membership after the end of
21 the school year during which the work was performed. The application
22 must:

23 (a) Include a list of the employers the substitute employee has
24 worked for;

25 (b) Include proof of hours worked and compensation earned; and

26 (c) Be made prior to retirement.

27 (2) Substitute employees who are members may apply to the
28 department to receive service after the end of the last day of
29 instruction of the school year during which the service was performed.
30 The application must:

31 (a) Include a list of the employers the substitute employee has
32 worked for;

33 (b) Include proof of hours worked and compensation earned; and

34 (c) Be made prior to retirement.

35 (3) If the department accepts the substitute employee's application
36 for service credit, the substitute employee may obtain service credit
37 by paying the required contribution to the retirement system. The
38 employer must pay the required employer contribution upon notice from

1 the department that the substitute employee has made contributions
2 under this section.

3 (4) The department shall charge interest prospectively on employee
4 contributions that are submitted under this section more than six
5 months after the end of the school year, as defined in RCW 28A.150.040,
6 for which the substitute employee is seeking service credit. The
7 interest rate charged to the employee shall take into account interest
8 lost on employer contributions delayed for more than six months after
9 the end of the school year.

10 (5) Each employer shall quarterly notify each substitute employee
11 it has employed during the school year of the number of hours worked
12 by, and the compensation paid to, the substitute employee.

13 (6) If a substitute employee, as defined in RCW 41.35.010(38),
14 applies to the department under this section for credit for earnable
15 compensation earned from an employer, the substitute employee must make
16 contributions for all periods of service for that employer.

17 (7) The department shall adopt rules implementing this section.

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